

सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद 380015

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN NO. : 20210964 3W0000017686

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1513/2021-APPEAL / 3168 To 3173

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-JC-38/2021-22

दिनांक Date : 17-09-2021 जारी करने की तारीख Date of Issue : 17-09-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No ZA2401210171981 dated 05.01.2021
Issued by Superintendent, Central Goods and Service Tax, Range-I,
Division- II, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

MR Mistry (Manishbhai Ratilal Mistry)

B, 0133 37 0071, Bhagwandas Ni Chali,

Mahendikuwa Char Rasta,

O/s Shahpur Gate,

Ahmedabad, Gujarat - 380004

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-In-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .

ORDER IN APPEAL**Brief Facts of the Case :-**

This appeal has been filed under Section 107 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act") by M/s. MR Mistry (Trade Name), Manishbhai Ratilal Mistri (Legal Name), B, 0133 37 0071, Bhagwandas ni Chali, Mehandikuwa Char Rasta, O/S Shahpur Gate, Ahmedabad - 380004 (hereinafter referred to as "the appellant") against the Order No.ZA2401210171981 dated 05.01.2021 (hereinafter referred to as "the impugned order") passed by the Superintendent, Central Goods and Service Tax Range- I, Division-II - Naroda Road, Ahmedabad North (hereinafter referred to as "the adjudicating authority/Proper Officer").

2. Brief facts of the case are that the Proper Officer has cancelled the GSTIN : 24ARXPM9197Q1ZA of M/s. MR Mistry (Trade Name), Manishbhai Ratilal Mistri (Legal Name), B, 0133 37 0071, Bhagwandas ni Chali, Mehandikuwa Char Rasta, O/S Shahpur Gate, Ahmedabad - 380004 due to reason that as the appellant has not filed returns for a continuous period of six months.

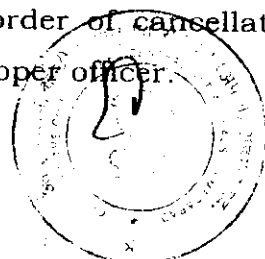
3. Being aggrieved with the impugned order dated 05.01.2021, the appellant has filed the appeal on 03.08.2021, i.e. after the delay of 120 days from the normal period prescribed under Section 107(1), of CGST Act, 2017. Further, the appellant has submitted that they have filed GST returns till January - 2021 with late fees i.e. up to the date of cancellation of registration. The appellant in their grounds of appeal has mentioned that they have tried many times to apply for revocation of cancelled registration but unable to file application for revocation of cancellation of GST Registration.

Personal Hearing :-

4. Personal hearing in the case was held on 31.08.2021 in virtual mode. Shri Karan Chauhan, C. A. as Authorized Representative of Appellant has attended the hearing. He reiterated the submissions made in appeal memorandum and requested to consider their appeal.

Discussion and Findings :-

5. I have gone through the facts of the case and the written submissions made by the appellant. I find that the main issue to be decided in the instant case are (i) whether the appeal has been filed within the prescribed time-limit and (ii) whether the appeal filed against the order of cancellation of registration can be considered for revocation by the proper officer.



6. First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a **further period of one month.**

7. I observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

7.1 Further, in the above context, I find that in terms of the Hon'ble Supreme Court judgment dated 23.03.2020, wherein the Apex Court taking suo moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020 till further orders. Further, the Hon'ble Supreme Court vide order dated 27.04.2020 has restored the order dated 23rd March 2020 thereby directing that the period(s) of limitations, as prescribed under any General or Special Laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders from 15.03.2020.

7.2 In the above context, I also find that the CBIC, New Delhi has issued Notification No.35/2020-Central Tax dated 3rd April 2020 and notified as under:-

(i) where, any time limit for completion or compliance of any action, by any



authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of June, 2020, including for the purposes of -

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

(b) **filing of any appeal**, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

7.3 Further, CBIC, New Delhi vide Notification No.55/2020-Central Tax dated 27th June,2020 has make the following further amendment in the Notification of the Govt of India in the Ministry of Finence (Department of Revenue), No.35/2020-Central Tax dated 3rd April,2020 published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub section (i) vide number GSR 235(E) dated 3rd April,2020 namely:-

In the said notification, in the first paragraph, in clause (i), -

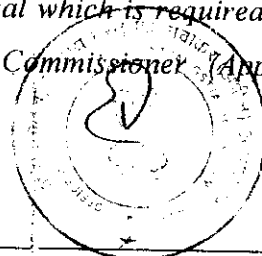
(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be substituted;

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020" shall be substituted.

7.4 I also find that the CBIC, New Delhi has issued Circular No. 157/13/121-GST dated 20th July, 2021 and clarified as under:-

4(c):- Appeals by taxpayers/ tax authorities against any quasi- judicial order:-
Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals),



Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.

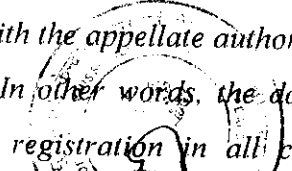
In view of above and also looking into the **Covid-19 pandemic situation** in the instant matter, I am inclined to condone the delay of filing of appeal.

8. As regards to whether the appeal filed against the order of cancellation of registration can be considered for revocation I observed that recently CBIC has issued Notification No. 34/2021 - Central Tax dated 29.08.2021. The relevant portion is reproduced as under :

"G.S.R.....(E).- In partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue) hereby notifies that where a registration has been cancelled under clause (b) or (c) of sub-section (2) of section 29 of the said Act and the time limit for making an application of revocation of cancellation of registration under sub-section (1) of section 30 of the said Act falls during the period from the 1 st day of March, 2020 to 31st day of August, 2021, the time limit for making such application shall be extended upto the 30th day of September, 2021."

Further, I find that CBIC has issued Circular No. 158/14/2021-GST dated 06.09.2021 on the subject "Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29th August, 2021 - Reg." The relevant para 3.1 of Circular is reproduced as under :

3.1. The said notification specifies that where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, the time limit for filing of application for revocation of cancellation of registration is extended to 30th September, 2021. Accordingly, it is clarified that the benefit of said notification is extended to all the cases where cancellation of registration has been done under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Ac, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021. It is further clarified that the benefit of notification would be applicable in those cases also where the application for revocation of cancellation of registration is either pending with the proper officer or has already been rejected by the proper officer. It is further clarified that the benefit of notification would also be available in those cases which are pending with the appellate authority or which have been rejected by the appellate authority. In other words, the date for filing application for revocation of cancellation of registration in all cases, where



registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of CGST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, is extended to 30th September, 2021, irrespective of the status of such applications. As explained in this para, the said notification would be applicable in the following manner:

(i) application for revocation of cancellation of registration has not been filed by the taxpayer-

In such cases, the applications for revocation can be filed upto the extended timelines as provided vide the said notification. Such cases also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.

Accordingly, I am proceeded to decide the case.

9. I have gone through the facts of the case and the written submissions made by the appellant. I find that the adjudicating authority/proper officer has cancelled the registration with effect from 05.01.2021 as the appellant failed to file GST Returns for a continuous period of six months. On going through the records produced before me, I find that the proper officer has issued the Order of cancellation of registration of Appellant on 05.01.2021 effective from 05.01.2021.

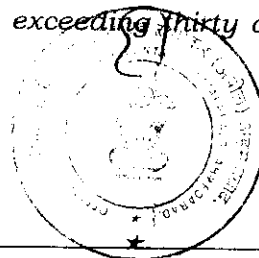
Further, I find that the provisions of revocation of cancellation of registration when the same is cancelled by the proper officer on suo moto basis are contained in Section 30 of the CGST Act, 2017 and Rule 23 of the CGST Rules, 2017. Therefore, I find it pertinent to refer Section 30 and Rule 23 as under under: -

SECTION 30. Revocation of cancellation of registration. — (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order :

[Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended, -

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]



(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application :

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

RULE 23. Revocation of cancellation of registration. — (1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in **FORM GST REG-21***, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner :

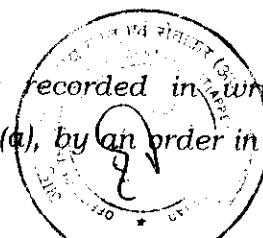
Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns :

[Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration :

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.]

(2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in **FORM GST REG-22*** within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in **FORM GST**



REG-05*, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

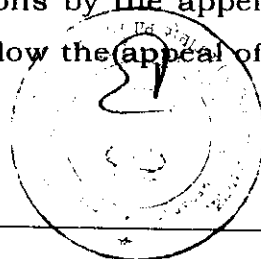
(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in **FORM GST REG-23*** requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in **FORM GST REG-24***.

(4) Upon receipt of the information or clarification in **FORM GST REG-24***, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

10. Further, I find that the Central Board of Indirect Taxes & Customs, New Delhi has clarified the issue vide circular No. 99/18/2019-GST dated 23.04.2019. Para 3 of said circular read as under:

3. First proviso to sub-rule (1) of rule 23 of the said Rules provides that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid. Thus, where the registration has been cancelled with effect from the date of order of cancellation of registration, all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed. Further, in such cases, in terms of the second proviso to sub-rule (1) of rule 23 of the said Rules, all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of thirty days from the date of the order of revocation.

11. On going through the records/submissions, I find that the appellant has declared in the appeal memorandum that they have filed GST Returns till January - 2021 with late fees i.e. till the date of order of cancellation of registration. In support of same the appellant has also produced the copy of status of filing of GST Returns. Hence, I find that the appellant has complied with the above said provisions in the instant case. Further, I find that as the Registration Cancellation order passed on 05.01.2021 the appellant is eligible to file application for revocation registration by 30.09.2021 under Section 30 of the said Act in terms of CBIC Notification No. 34/2021-Central Tax dated 29.08.2021. Therefore, I am of the opinion that the registration of appellant may be considered for revocation by the proper officer subject to due compliance of the conditions by the appellant under Rule 23(1) of CGST Rules, 2017. Accordingly, I allow the appeal of the



appellant and order to the proper officer to consider the revocation application of the appellant after due verification of payment particulars of tax, penalty, late fee, interest and status of returns.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


The appeal filed by the appellant stands disposed of in above terms.

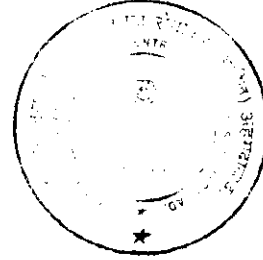

(Mitir Rayka)

Joint Commissioner (Appeals)

Date: 14.09.2021

Attested


(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,
M/s. MR Mistry (Trade Name),
Manishbhai Ratilal Mistri (Legal Name),
B, 0133 37 0071, Bhagwandas ni Chali,
Mehandikuwa Char Rasta, O/S Shahpur Gate,
Ahmedabad - 380004

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, Central GST & C.Ex, Ahmedbad North.
3. The Superintendent, CGST & C.Ex, Range-I, Division-II - Naroda Road, Ahmedbad North.
4. The Assistant Commissioner, CGST & C.Ex, Division-II - Naroda Road, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File